

REMARKS

Claims 1-14 are pending in the application. Claims 1-3 and 6-12 have been amended. Accordingly, Claims 1-14 remain pending in the application.

The Examiner objected to the specification. Applicant has amended the cross-reference section of the specification to overcome this objection.

35 U.S.C. § 103 Rejection

Claims 1-14 were rejected under 35 U.S.C. 103(a) as being unpatentable over Osborne, II et al. (U.S. Patent No. 7,000,224) in view of Farchi et al. (*Using a model-based test generator to test for standard conformance*, 2002, IBM Systems Journal).

In order to reject a claim as obvious, the Examiner has the burden of establishing a *prima facie* case of obviousness. *In re Warner* et al., 379 F.2d 1011, 154 U.S.P.Q. 173, 177-178 (C.C.P.A. 1967). As stated in the section 2143 of the MPEP (Eighth Ed., Rev. 5), three basic criteria must be met to establish a *prima facie* case of obviousness: "First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations".

1. Applicant respectfully submits that Osborne and Farchi, whether alone or combined, fail to teach or suggest, "providing a plurality of suites of test programs...wherein said suites are represented in a plurality of formats" as recited by claim 1.

The Examiner contends on page 3 of the pending Office Action that Column 5, lines 4-13 of Osborne teach the above-highlighted feature of claim 1. Applicant respectfully disagrees. In Column 5, lines 4-13, Osborne teaches:

Application under test 114 is a software application as known in the art. It includes middleware 116 that encapsulates some business logic. A user accesses the application through a client device. Many types of client devices are possible, with the list growing as networks become more prevalent. Personal computers, telephone systems and even household appliances with micro-controllers could be the client device. For simplicity, the client device is illustrated herein as a personal computer (PC) 120, though the specific type of client device is not important to the invention.

While Osborne teaches that “Application under test 114 is a software application” which “includes middleware 116 that encapsulates some business logic”, Osborne fails to teach, “providing a plurality of suites of test programs...wherein said suites are represented in a plurality of formats” as recited by claim 1.

2. Additionally, Applicant respectfully submits that Osborne and Farchi, whether alone or combined, fail to teach or suggest, “downloading said converted test programs from said server to said computing devices for execution thereof by said computing devices” as recited by claim 1.

The Examiner contends on page 3 of the pending Office Action that Column 8, lines 40-47 and Column 19, lines 3-5 of Osborne teach the above-highlighted feature of claim 1. Applicant respectfully disagrees. In Column 8, lines 40-47, Osborne teaches:

FIG. 4 shows the process by which queue manager 320B coordinates the actions of test engines located on separate servers. At step 410, queue manager 320B waits for the required number of test engines to become available. Once the test engines are available, at step 412 queue manager 320B sends commands to each test engine that will be involved in the test to download the test code from the appropriate one of the code generators 212A and 212B. (Emphasis added)

Furthermore, in Column 19, lines 3-5, Osborne teaches:

In FIG. 9, the test code 516 is identified as "client code" because it will simulate the operation of a client 120 of the application under test 114. (Emphasis added)

While Osborne teaches test engines 214, which are located on separate servers, for downloading the test code from code generators 212 and client code that will simulate the operation of a client 120 of the application under test 114, Osborne fails to teach, “downloading said converted test programs from said server to said computing devices

for execution thereof by said computing devices” as recited by claim 1. It is noted that in Osborne both the test engines 214 and the code generators 212 are part of the test system 110 (see FIG. 2), which is connected to the client devices (e.g., PC 120) via network 122. In claim 1, the “computing devices” that execute the “converted test programs” are the client devices being tested (see claim 1, “A method of testing computing devices”). Therefore, Osborne fails to teach the above-highlighted feature of claim 1.

Accordingly, claim 1 is believed to patentably distinguish over Osborne and Farchi, whether alone or combined. Claims 2-5 are dependent upon claim 1 and are therefore believed to patentably distinguish over the cited references for at least the same reasons.

Likewise, claim 6 recites features similar to those highlighted above with regard to claim 1 and is therefore believed to patentably distinguish over Osborne and Farchi, whether alone or combined, for at least the reasons given in the above paragraphs discussing claim 1. Claims 7-10 are dependent upon claim 6 and are therefore believed to patentably distinguish over the cited references for at least the same reasons.

3. Furthermore, Applicant respectfully submits that Osborne and Farchi, whether alone or combined, fail to teach or suggest, “a processor configured to provide a suite of test programs for execution by said computing devices that are coupled to said server apparatus, and to download said test programs via said communication interface for execution by said computing devices coupled thereto, wherein said processor is further configured to control said execution by said computing devices; wherein said test programs are initially input to said server apparatus in a plurality of formats, and said processor is further configured to convert said plurality of formats into a common format for download thereof to said computing devices” as recited by claim 11.

The rejection of claim 11 is unsupported by the cited references for at least the reasons given above in the paragraphs discussing claim 1.

Accordingly, claim 11 is believed to patentably distinguish over Osborne and Farchi, whether alone or combined. Claims 12-14 are dependent upon claim 11 and are therefore believed to patentably distinguish over the cited references for at least the same reasons.

CONCLUSION

Applicant submits the application is in condition for allowance, and an early notice to that effect is requested.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5681-80300/MJL.

Respectfully submitted,



Name Mario J. Lewin

Reg. No. 54,268

ATTORNEY FOR APPLICANT(S)

Meyertons, Hood, Kivlin,
Kowert, & Goetzel, P.C.
P.O. Box 398
Austin, TX 78767-0398
Phone: (512) 853-8800

Date: 4/25/07